IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 106 of 1989

STATE & ORS.
V/S
TEJ SINGH & ANR.

Mr. HR SONI, A.G.A., for the appellant

No body appears for the respondents

Date of Order : 16.11.2006

HON'BLE SHRI N P GUPTA,J.

JUDGMENT

This appeal has been filed by the defendant, against the judgments and decrees of the two learned Courts below, decreeing the plaintiffs' suit for eviction, on the ground of default and reasonable and bonafide necessity of the plaintiff.

The plaintiff filed the present suit for eviction, alleging to have purchased the property for his own residence, alleging that they were living in tenanted premises. It was also alleged that the defendant has committed default in payment of rent since 6.9.80.

The defendant contested the suit inter-alia on the ground that the plaintiff is living in his own house, and is not living in tenanted house, and that since the premises are being used for running a school, the defendant

would suffer greater hardship. It was also contended that after purchase of the house by the plaintiff, the plaintiff was requested to submit four blue prints, so that appropriate amount of rent could be determined, but that was not complied with by the plaintiff. Regarding rent it was pleaded, that it was the plaintiff's duty to submit bill of rent, and thereupon, the payment could have been made, but since the plaintiff did not submit any bill, the defendant cannot be said to be defaulter.

The learned trial Court framed mainly three issues. First was about default, second was about reasonable and bonafide necessity, and third was about comparative hardship.

Both the learned Courts below have decreed the suit, finding the defendant to have committed default, and finding the plaintiff to have proved reasonable and bonafide necessity, and comparative hardship. Regarding default, it was found, that after the determination of rent was made vide order dated 20.8.82, the defendant did not deposit the amount month by month, inasmuch as, rent for the month of August 1982 i.e. 6.8.82 to 5.9.82 was not deposited within 15 days of its becoming due, nor within the further extendable 15 days, rather it was deposited on 14.10.82, with the result, that on the plaintiff's application, the defense against eviction was struck out,

and that striking out of the defense has been upheld.

This appeal was filed way-back on 18.8.89. However, on going through all the order-sheets of the second appeal, it doesn't reveal, that the appeal has ever been admitted, rather initially vide order dated 13.9.89 record was requisitioned. Then reminders were issued, then some explanation were called for not sending the record. Then it appears that the appeal was dismissed in default, which of course was restored, then vide order dated 19.12.89 show cause notice was issued as to why the appeal be not admitted and allowed, and then there are various order-sheets, but then I do not find any order, whereby the appeal may have been admitted. Be that as it may. It would be much too late in the day, now after more than 17 years, to dismiss the appeal on the ground of it having not been admitted and as such, I have examined the matter on merits.

As noticed above, the learned Courts below have found, that the provisional determination of rent was made vide order dated 20.8.82, and thereafter the defendant did not deposit the rent for the month of August 1982, i.e. 6.8.82 to 5.9.82, within 15 days of next succeeding month, and thereupon the plaintiff filed an application for striking out the defense, and vide order dated 9.5.86, the defense was ordered to be struck off.

Before me, it is not in dispute, that rent for the month of August 1982 i.e. 6.8.82 to 5.9.82 was deposited on 14.10.82. According to the provisions of Section 13(4) of the Rajasthan Premises (Control of Rent and Eviction) Act, the monthly rent, after the period for which the determination has been made, is required to be deposited by 15th of each succeeding month, or within such further time not exceeding 15 days, as may be extended by the Court.

In the present case, the amount has not been deposited even within the further extendable period of 15 days, which also expired on 5th of October 1982. In that view of the matter, I do not find any error on the part of the learned Courts below, in striking out the defense of the appellant against the eviction, and thus passing the decree on the ground of the defendant having committed default in payment of rent.

That being the position, since the decree can be sustained even on one ground, I need not examine the other grounds, on which the decree has been passed. It is again a different story, that it is informed by learned counsel for the appellant, that the decree has already been executed, and possession has been taken from the appellant. Be that as it may.

The net result is that I do not find any force in the appeal, and the same is, therefore, dismissed.

(N P GUPTA),J.

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